

A.) REMARKS:

1. Introduction

Claims 2-11, 13-17, 19, 36-40, 42 and 44 are currently pending in this application.

Claims 2, 10 and 36 are independent.

2. Claim Rejections Under 35 U.S.C. §112

In the Office Action, the Examiner has rejected each of pending claims 2-11, 13-17, 19, 36-40, 42 and 44 under 35 U.S.C. §112, first paragraph, as “failing to comply with the written description requirement.” Applicants respectfully disagree.

In the prior Response dated June 1, 2004, Applicant has provided the Examiner citations in the Specification in which each of the recitations of the claims is readily supported, which citations are renewed herein to overcome the instant rejection. Instead of alleging a failure of the recitations to be described in the specification, the Examiner instead argues that the “specification provides no information as to what methods, algorithms or systems are used to perform the comparison...” of customer and merchant profiles based on comparison keys of customer and merchant profiles recited in the claims. The Examiner further states that “[n]o information is provided as to what statistical or inferential methods are used by the invention.”

In response to these and other arguments put forth by the Examiner, Applicants’ assert that various manners for the profiling and comparison of customers and merchants are well known in the art, any of which may be used in accordance with applicants’ claimed methods and apparatus. The invention is not limited to any one particular set of algorithms for accomplishing this.

“A patent need not teach, and preferably omits, what is well known in the art.” MPEP §2164.01. *In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 947 (1987); and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984).

“The more that is known in the prior art about the nature of the invention, how to make, and how to use the invention, and the more predictable the art is, the less information needs to be explicitly stated in the specification.” MPEP §2164.03. “A single embodiment may provide broad enablement in cases involving predictable factors, such as mechanical or electrical elements.” *In re Vickers*, 141 F.2d 522, 526-27, 61 USPQ 122, 127 (CCPA 1944); *In re Cook*, 439 F.2d 730, 734, 169 USPQ 298, 301 (CCPA 1971). Applicants have provided a description of such broad embodiments in the Specification at pp. 25-27.

“Applicant may ... cite references to show what one skilled in the art knew at the time of filing the application.” MPEP §2164.05. Applicants direct the Examiner’s intention to patents such as U.S. Patent Nos. 6,035,288; 6,343,274; 5,664,115 and 5,592,375, each of which predate Applicants’ filing date, and which disclose various methods for profiling customers and merchants in various contexts. These references establish that various methods for accomplishing the matching of customer and merchant profile were sufficiently well known in the prior art. The Applicants’ disclosure is therefore sufficient to convey to one of ordinary skill in the art how to use customer and merchant profiling information as recited.

“The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims.” MPEP §2163.04 . *Wertheim*, 541 F.2d at 263, 191 USPQ at 97. In support of these rejections, the Examiner states “the comparison keys recited for buyers and sellers differ and it is unclear how comparison of unlike keys would be performed.” However, there is no requirement in the claims or specification that each of the elements of a comparison key of a merchant be matched with an element of a comparison key of the consumer, or the reverse. That is, while each claim recites what profile information may be collected for a consumer and for a merchant, there is no requirement that each item of profile information match with another. One of ordinary skill will then readily recognize that there is no comparison of unlike information, and conversely, that there will be a comparison of like information. For example, one of ordinary skill in the art will readily appreciate that the recited “order shipment time” for a merchant profile may be compared to the “shipping needs” recited for the customer profile. One of ordinary skill in the art will further recognize that order shipment time may be based on the location of the consumer. Other combinations of comparison key information are likewise readily apparent. Accordingly, one of ordinary skill in the art will readily understand from Applicants' Specification at pp. 25-27 how to compare consumer and merchant profile information.

Applicants affirm that the prior art fails to disclose a procurement system as recited in the claims in which customer and merchant profiling information may be used to match buyers and sellers in the collective procurement processes recited, that the disclosure of the invention is sufficient for one of ordinary skill in the art to understand the invention, and that Applicants had

sufficient possession of the claimed invention at the time of filing of the present application. Applicants therefore request reconsideration and withdrawal of this rejection of the pending claims, and allowance of the present application.

### 3. Conclusion

This amendment is believed to be responsive to each issue raised in the Office Action dated September 8, 2004. Entry of this response is earnestly solicited. Reconsideration and allowance of each of the pending claims is likewise respectfully requested. The Examiner is invited to contact the undersigned attorney at the telephone number provided below if it will advance the prosecution of this application.

Respectfully submitted,

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